

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 JOSE GALLIMORT,

11 Petitioner,

12 vs.

13 JAMES DZURENDA, *et al.*,

14 Respondents.
15

Case No. 2:17-cv-01083-GMN-CWH

ORDER

16
17 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254
18 by a Nevada state prisoner. Neither a filing fee nor an application to proceed *in forma pauperis* was
19 submitted with the petition. When filing a habeas action, petitioner must either submit the \$5.00
20 filing fee for habeas petition or an application to proceed *in forma pauperis*. Due to the lack of an
21 *in forma pauperis* application or filing fee, the present action will be dismissed without prejudice to
22 the filing of a new petition in a new action with a pauper application with all required attachments.
23 It does not appear from the papers presented that a dismissal without prejudice would result in a
24 promptly-filed new petition being untimely. In this regard, petitioner at all times remains
25 responsible for calculating the running of the limitations period as applied to his case and properly
26 commencing a timely-filed habeas corpus action.

27 **IT IS THEREFORE ORDERED** that this action is **DISMISSED WITHOUT**
28 **PREJUDICE** to the filing of a **new petition in a new action.**

IT IS FURTHER ORDERED that the Clerk of the Court shall send petitioner the following: (1) two copies of an *in forma pauperis* application form for a prisoner and one copy of the instructions for the same, (2) two copies of a blank 28 U.S.C. § 2254 habeas petition form and one copy of instructions for the same; and (3) the petition.

IT IS FURTHER ORDERED that petitioner may file a new petition in a new action, but may not file further documents in this action.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**. Reasonable jurists would not find the dismissal of the improperly-commenced action without prejudice to be debatable or wrong.

IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment accordingly.

Dated this 5 day of May, 2017.

Gloria M. Navarro, Chief Judge
United States District Court